

2015 WL 6618625 (N.Y.Sup.) (Trial Pleading)
Supreme Court of New York.
Bronx County

Ruby LEWIS, Plaintiff(s),

v.

THE CITY OF NEW YORK, Commissioner Raymond Kelly in His Official Capacity, Deputy
Inspector Kevin Catalina as the Commanding **Officer** of the 44th Precinct and Police **Officers**
“John Does” #1-4 (the names herein to be fictitious as they are currently unknown), Defendant(s).

No. 0304527-2015.
October 23, 2015.

Plaintiffs designate:

Bronx County as the place of trial.

The basis of venue is:

place of Occurrence

Plaintiff resides at:

[REDACTED]
[REDACTED]
[REDACTED]

Summons

[Michael Braverman](#), [Ruby Lewis](#), Getz & Braverman, P.C., 172 East 161st Street, Bronx, New York 10451, (718) 993-3000,
Our File No.: 8675, for plaintiff(s).

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED, to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Bronx, New York

October 22, 2015

MICHAEL BRAVERMAN

GETZ & BRAVERMAN, P.C.

Attorneys for Plaintiff(s)

RUBY LEWIS

172 East 161st Street

Bronx, New York 10451

(718) 993-3000

Our File No.: 8675

RUBY LEWIS, by her attorneys, **GETZ & BRAVERMAN, P.C.**, respectfully alleges as follows:

AS AND FOR A FIRST CAUSE OF ACTION

(1) At all times mentioned, Plaintiff **RUBY LEWIS**, was a resident of Bronx County, City and State of New York.

(2) At all times mentioned, Defendant **CITY OF NEW YORK**, was and is a municipal corporation duly organized and existing by virtue of the Laws of the State of New York.

(3) Upon information and belief, at all times mentioned, Defendants **THE CITY OF NEW YORK, COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY, DEPUTY INSPECTOR KEVIN CATALINA AS THE COMMANDING OFFICER OF THE 44TH PRECINCT and POLICE OFFICERS “JOHN DOES” #1-4 (the names herein to be fictitious as they are currently unknown)**, were and are police **officers** of the Defendant City of New York, and at all times herein were acting in such capacity as the agents, servants and employees of the Defendant, **THE CITY OF NEW YORK**.

(4) On or about July 26, 2013, within Apartment 22A located at 790 Concourse Village West, County of Bronx, State of New York the Defendants jointly and severally in their capacity as police **officers**, wrongfully touched, grabbed, handcuffed and seized the Plaintiff **RUBY LEWIS**, in an excessive manner about her person, causing her physical pain and mental suffering. At no time did the Defendants have legal cause to grab, handcuff seize or touch the Plaintiff, nor did the Plaintiff consent to this illegal touching nor was it privileged by law.

AS AND FOR A SECOND CAUSE OF ACTION

(5) Plaintiffs repeats, reiterates and re-alleges all of the allegations contained in Paragraphs “1” through “7” with full force and effect as though set forth at length herein.

(6) On or about July 26, 2013, within Apartment 22A located at 790 Concourse Village West, County of Bronx, State of New York the Defendants jointly and severally did place Plaintiff **RUBY LEWIS**, in imminent fear of physical contact by approaching the Plaintiff with their loaded firearms, outstretched limbs and other objects which they used to physically seize, strike and restrain the Plaintiff. All of the above actions placed the Plaintiff in imminent fear of physical contact. At no time did the Plaintiff consent to the unlawful actions of the Defendants.

AS AND FOR A THIRD CAUSE OF ACTION

(7) Plaintiffs repeats, reiterates and re-alleges all of the allegations contained in Paragraphs “1” through “9” with full force and effect as though set forth at length herein.

(8) On or about July 26, 2013, within Apartment 22A located at 790 Concourse Village West, County of Bronx, State of New York the Defendants **THE CITY OF NEW YORK, COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL**

CAPACITY, DEPUTY INSPECTOR KEVIN CATALINA AS THE COMMANDING **OFFICER** OF THE 44TH PRECINCT and POLICE **OFFICERS** "JOHN DOES" #1-4 (the names herein to be fictitious as they are currently unknown), jointly and severally with an warrant, order or other legal process as they misidentified and accused the plaintiff falsely, wrongfully and unlawfully then arrested the Plaintiff, restrained her and her liberty and then took her into custody to a police station in the County of Bronx, and there charged her with the crimes. The Plaintiff was thereafter held in custody over the course of approximately one (1) day without probable cause until he was released and all charges against her dismissed. The Defendants intentionally confined the Plaintiff without her consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of her confinement and had requested multiple explanations and/or an appeal to the Warden of the New York City Department of Corrections while in the five months of her confinement.

AS AND FOR A FOURTH CAUSE OF ACTION

(9) Plaintiffs repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "11" with full force and effect as though set forth at length herein.

(10) On or about July 26, 2013, within Apartment 22A located at 790 Concourse Village West, County of Bronx, State of New York the Defendants, jointly and severally without any valid warrant, order or other legal process and without any legal right, wrongfully and unlawfully imprisoned the Plaintiff, restrained her and her liberty and then took her into custody and causing her to be incarcerated as a detainee in the City of New York's Correctional Facility. The Plaintiff was thereafter held in custody over the course of approximately one (1) day before she was released. The Defendants intentionally confined the Plaintiff without her consent and the confinement was not otherwise privileged by law and at all times, the Plaintiff was conscious of her confinement.

AS AND FOR A FIFTH CAUSE OF ACTION

(11) Plaintiffs repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "12" with full force and effect as though set forth at length herein.

(12) Upon information and belief, on or about July 26, 2013 and from that time until the dismissal of charges, which was a favorable termination for the accused by the Honorable Judge presiding at, Bronx County Supreme Court, Defendants **THE CITY OF NEW YORK, COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY, DEPUTY INSPECTOR KEVIN CATALINA AS THE COMMANDING **OFFICER** OF THE 44th PRECINCT and POLICE **OFFICERS**** "JOHN DOES" #1-4 (the names herein to be fictitious as they are currently unknown), an innocent female without any probable cause whatsoever, by filing or causing a criminal court complaint to be filed in the Criminal Court of the City of New York, Bronx County, for the purpose of falsely accusing the plaintiff of violations of the criminal laws of the State of New York.

(13) The Defendants, jointly and severally, their agents, servants or employees failed to take reasonable steps to stop the prosecution of the Plaintiff and instead maliciously and deliberately provided false and/or incomplete information to the District Attorney's office to induce prosecution of the Plaintiff and due to the absence of probable cause malice can be inferred.

(14) The commencement of these criminal proceedings was malicious and began in malice and without probable cause, so that the proceedings could succeed by the Defendants.

(15) As a result of the malicious prosecution, Plaintiff was deprived of her liberty and suffered the humiliation, mental anguish, indignity and frustration of an unjust criminal prosecution. The Plaintiff made multiple request to the Warden for a court appearance and/or appeals to defend her liberty against these unjust charges.

AS AND FOR A SIXTH CAUSE OF ACTION

(This Cause of Action only applies against the Individually named Police Officers not the City of New York or officers sued in their official capacity)

(16) Plaintiffs repeats, reiterates and re-alleges all of the allegations contained in Paragraphs “1” through “18” with full force and effect as though set forth at length herein.

(17) Defendants Defendants **P.O. “JOHN DOE” #1 - P.O. “JOHN DOE” #4 name to be fictitious are they are unknown**, were at all times relevant, duly appointed and acting **officers** of the City of New York Police Department.

(18) At all times mentioned herein, said police **officers** were acting under color of law, to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.

(19) Plaintiff **RUBY LEWIS** is and at all times relevant herein, a citizen of the United States and a resident of Bronx County in the State of New York and brings this cause of action pursuant to [42 United States Code, Section 1983](#) and [42 United States Code, Section 1988](#).

(20) The Defendant **CITY OF NEW YORK** is a municipality duly incorporated under the laws of the State of New York.

(21) On or about July 26, 2013, the Defendants, armed police, while effectuating the seizure of Plaintiff **RUBY LEWIS**, did search, seize, assault and commit a battery and grab the person of the Plaintiff without a court authorized arrest or search warrant. They did physically seize the person of the Plaintiff during the arrest process in an unlawful and excessive manner. The Plaintiff was falsely arrested, unlawfully imprisoned and maliciously prosecuted without the Defendants possessing probable cause to do so.

(22) The above action of the Defendants resulted in the Plaintiff being deprived of the following rights under the United States Constitution:

- a. Freedom from assault to her person;
- b. Freedom from battery to her person;
- c. Freedom from illegal search and seizure;
- d. Freedom from false arrest;
- e. Freedom from malicious prosecution;
- f. Freedom from the use of excessive force during the arrest process;
- g. Freedom from unlawful imprisonment.

(23) The Defendants subjected the Plaintiff to such deprivations, either in a malicious or reckless disregard of the Plaintiffs rights or with deliberate indifference to those rights under the fourth and fourteenth amendments of the United States Constitution.

AS AND FOR A SEVENTH CAUSE OF ACTION

(24) Plaintiffs repeats, reiterates and re-alleges all of the allegations contained in Paragraphs “1” through “23” with full force and effect as though set forth at length herein. (This Cause of Action applies to the City of New York and the **officer** sued in their official capacity should be characterized as a “Monell” claim.)

(25) Defendant **CITY OF NEW YORK**, has grossly failed to train and adequately supervise its police **officers** in the fundamental law of arrest, search and seizure especially when its police **officers** are not in possession of a court authorized arrest warrant and where an individual, especially as here, has not committed a crime and has not resisted arrest, that its police **officers** should only use reasonable force to effectuate an arrest and the arrest should be based on probable cause.

(26) **THE CITY OF NEW YORK** was negligent by failing to implement a policy with its Police Department and instruct police **officers** who, absent the consent of the Plaintiff(or similarly situated individuals) or without the possession of a court authorized arrest and/or search warrant, said police **officers** of the City of New York are not to arrest individuals such as the Plaintiff here where probable cause is lacking and the use of force should only be reasonable when an individual resists arrest and should be used where a criminal defendant is not resisting arrest.

(27) **THE CITY OF NEW YORK** is negligent due to its failure to implement a policy with its Police Department or actively enforce the law, if any of the following are lacking:

1. Probable cause must be present before an individual such as the Plaintiff herein can be arrested.
2. Excessive force cannot be used against an individual who does not physically resist arrest.
3. An individual who sustains physical injury at the hands of the police during the arrest process should receive prompt medical attention.
4. An individual such as the Plaintiff herein cannot be subjected to a strip search with cavity inspection unless the police possess legal cause and/or have a reasonable suspicion and/or probable cause that the plaintiff has secreted contraband in or on his person.

(28) The foregoing acts, omissions and systemic failures are customs and policies of the **CITY OF NEW YORK** which caused the police **officers** to falsely arrest, maliciously prosecute, seize illegally and search the Plaintiff commit an assault/battery to his person and denied her prompt medical attention under the belief that they would suffer no disciplinary actions for their failure to take proper or prudent steps in this case.

(29) Defendant **CITY OF NEW YORK** was negligent in that prior to and at the time of the acts complained of herein, due to the prior history of the Police **Officers** Defendants, knew or should have known of the bad disposition of said Defendants or had knowledge of facts that would put a reasonably prudent employer on inquiry concerning their bad disposition and the fact that these **officers** were not suitable to be hired and employed by the **CITY OF NEW YORK** and that due to their lack of training, these **officers** should have had adequate supervision so that they would not arrest innocent individuals nor use excessive force during the arrest process.

WHEREFORE, Plaintiff demands judgement against the Defendants, together with the costs and disbursements of this action in the amount of damages greater than the jurisdictional limit of any lower court where otherwise have jurisdiction, together with attorneys' fees and costs for bringing this case and punitive damages.

Dated: Bronx, New York

October 22, 2015

Yours etc.,

MICHAEL BRAVERMAN, ESQ.

GETZ & BRAVERMAN, P.C.

Attorney for Plaintiff(s)

RUBY LEWIS

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